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EXAMINER

MATTISON, LORI K

ART UNIT	PAPER NUMBER
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1619

NOTIFICATION DATE	DELIVERY MODE
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07/21/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/591,583	Applicant(s) CASSIN ET AL.	
	Examiner LORI MATTISON	Art Unit 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 60-118 is/are pending in the application.
- 4a) Of the above claim(s) 66,67,92-111, and 116-118 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60-65,68-91 and 112-115 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>03/20/2007; 02/08/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

Applicant's amendments filed 03/26/2010 to claims 87 are acknowledged. Claims 1-59 are cancelled. Claims 60-118 are pending in the current application, of which claims 60-65, 68-91, and 112-115 are being considered on their merits. Claims 66, 67, and 92-111, and 116-118 are withdrawn from consideration at this time. Claims 66, 67, and 92 are withdrawn because they are drawn to an unelected species of tensioning agent. Applicant elected colloidal particles of inorganic fillers as the tensioning agent in the response filed 03/26/2010, however none of the synthetic polymers recited by the Markush groups of claims 66 and 67 are drawn to colloidal particles of inorganic fillers. The tensioning agents/synthetic polymers recited by instant claim 66 all comprise carbons and therefore are not inorganic. Claim 67 is drawn to natural polymers derived from plants and therefore is not inorganic colloidal particles. Claim 92 is drawn to use methacrylates as tensioning agents; these are not inorganic particles (i.e. they comprise carbon).

Applicant alleges that claims 93-111 are drawn to a **non**-silicone liquid fatty phase (i.e. the elected species; Reply, page 19, paragraph 2). Claims 93-111 comprise a liquid **silicone** fatty phase. Thus, claims 93-111 have been withdrawn because they are drawn to an unelected species.

Election/Restrictions

Applicant's election with traverse of Group I, claims 60-115 in the reply filed on 03/ is acknowledged. The traversal is on the ground(s) that the examiner has not

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shown that the inventions are distinct because the claims were not interpreted in light of the specification and that there is not a search burden. This is not found persuasive because: Suzuki and Gotou teach the method for applying a composition to skin which comprises a grafted ethylenic polymer, a fatty oil phase, and titanium dioxide in an amount 0.5 % by weight. Gotou teaches that finely dispersed particles are utilized to cover up liver spots and other blemishes, correct skin color, tint the skin to an attractive color, protect the skin from sunburn by cutting ultraviolet rays, and to absorb sweat and sebum. Therefore, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have substituted Suzuki's titanium dioxide with the colloidal titanium of Gotou because the colloidal titanium dioxide particles of Gotou provides numerous desirable features to skin. Furthermore, changes of size or proportions (in this case, the size of the titanium dioxide particles) is obvious (see M.P.E.P. § 2144.04).

With regard to the lack of search burden as alleged by Applicant, the examiner disagrees and finds applicant's traversal unpersuasive because the claims of the instant application do not fulfill the requirement of unity of invention under PCT Rules 13.1 and 13.2 (M.P.E.P. § 1850). The groups of invention (i.e. Group I and Group II) lack a technical relationship involving one or more of the same corresponding special technical features (PCT Rule 13.2; M.P.E.P. § 1850). M.P.E.P. § 1850 clearly states "that when the Office considers international applications as an International Searching Authority, as an International Preliminary Examining Authority, and during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be

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followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 U.S.C. 111.” “In applying PCT Rule 13.2 to international applications as an International Searching Authority, an International Preliminary Examining Authority and to national stage applications under 35 U.S.C. 371, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to the categories which meet the requirements of PCT Rule 13.2.” Since PCT Rule 13.2, and *not* search burden under M.P.E.P. § 803, is the basis for restriction between categories in national stage applications under 35 U.S.C. 371, applicant’s arguments regarding search burden is moot in light of a demonstrated lack of unity of invention under PCT Rule 13.2. However, even if application of M.P.E.P. § 803 were appropriate; the lack of special technical feature in all of the claims creates a serious search burden since there is no unifying concept/feature shared among the claims.

Claims 66, 67 and 92-111 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected species, there being no allowable generic or linking claim.

Applicant traverses the species election alleging that the examiner has not shown that the species are patentably distinct. This is not persuasive. The tensioning agents of inorganic fillers, natural polymers, synthetic polymers, mixed silicates, and wax particles do not share a common chemical structure. With regard to the liquid fatty phase, the constituents are not the same and even mutually exclusive (i.e. non-silicone

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liquid fatty phase vs. a silicone containing liquid fatty phase). With regard to the ethylenically unsaturated polymer, the structures of the macromonomer (e.g. acrylates, polybutylene copolymers, silicone containing macromonomers) are distinct and not the same between the species.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

Foreign non-English documents 749,747, and 1,428,844 have been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 70- 79, 91, and 115 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 70- 79, 91, and 115 are also rejected under 35 USC 112, second paragraph for failing to further limit the process of instant claim 60.

Claims 70 and 91 are drawn to product-by-process type limitations for the process of ***making*** the polymer, ***not using*** the polymer as recited by instant claim 60. Because claims 71-79 ultimately depend from indefinite claim 70, they must also be rejected under 35 USC 112, second paragraph.

Claim 115 is drawn to the cosmetic product and does not further define the process of using the product. Therefore, claim 115 fails to further limit the process of instant claim 60, from which it depends.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 60- 65, 68- 90, and 112- 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication No. 2004/0156812 (Lion, 2004), in light of US Patent No. 6,326,013 (LeMann, 2001), *Shy Child* accessed from [://www.betterphoto.com/gallery/dynoGallDetail.asp?photoID=1020197&catID=109&contEstCatID=&rowNumber=7&camID=](http://www.betterphoto.com/gallery/dynoGallDetail.asp?photoID=1020197&catID=109&contEstCatID=&rowNumber=7&camID=) on 6/21/2010, and Applicant's own specification, in

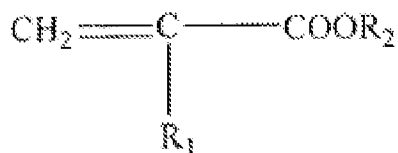
view of WO 97/13497 (Sheard, 1997) and Dark Lips published at
://www.indiaparenting.com/faqs/beauty/dark_lips.shtml on 8/22/2003.

Claim Summary: The composition is a makeup composition utilized in the method and comprises a tensioning agent in an amount of 1 to 10 wt% (instant claims 61 and 115), and a non-silicone liquid fatty phase which has a Hansen solubility parameter of less than or equal to $18 \text{ (MPa)}^{1/2}$ in an amount of 0.5 to 80 wt.% (instant claims 63, 80-82). This non-silicone liquid fatty phase comprise is a branched alkane (instant claim 83). The liquid fatty phase is free of silicone liquid organic compounds and comprises less than 50% by weight silicone liquid organic compounds or does not comprise silicone liquid ingredients (instant claim 85 and 86). The non-silicone liquid fatty phase may also be a monoalcohol with a Hansen solubility space of less than or equal to $20 \text{ (MPa)}^{1/2}$ (instant claim 84). These reagents consist of saturated and unsaturated liquid aliphatic fatty monoalcohols (instant claim 84). The grafted ethylenic polymer is a grafted acrylic polymer (instant claim 69). The grafted ethylenic polymer comprises a backbone that is insoluble in the liquid fatty phase and the part that is soluble in said liquid fatty phase is composed of side chains covalently bonded to the backbone (instant claim 68). The polymer utilized in the method is formed by free radical polymerization (instant claim 70). The macromonomer has a polymerizable end group and a weight average molecular weight of greater than or equal to 200 and represents 0.05 to 20% by weight of the polymer (instant claim 70) or 0.1 to 15 wt% (instant claim 78). The weight average of the macromonomer may be from 200 to 100,000 (instant claim 77). The end group of the macromonomer is a methacrylate

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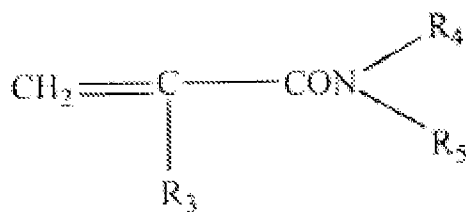
group (instant claim 76). The macromonomer is chosen from macromonomers in which the homopolymer is dissolved completely in said liquid fatty phase at a concentration of greater than or equal to 5% by weight at an ambient temperature of 20°C (instant claim 79). The macromonomer may be carbon macromonomers comprises polyethylene/polybutylene copolymer macromonomers including a poly(ethylene/butylene) methacrylate (instant claims 87-91).

The acrylic monomer optionally has at least one additional non-acrylic vinyl monomer and has an insoluble backbone (instant claims 70). Alternatively, the grafted acrylic polymer does not comprise additional non-acrylic vinyl monomers (instant claim 75). Acrylic acid polymers comprise 100% of the mixture of composed of the acrylic acid and non-acrylic vinyl monomers (instant claim 74). The acrylic acid monomer is recited to have the structure:



(instant claim 72). When the optional vinyl

is present, it is recited to have the structure:



(V)

(instant claim 73).

The polymer dispersion is recited to be present in the composition in an amount from 0.01 to 20 % (instant claim 62). The grafted polymer has a weight average molecular weight of 10,000-300,000 and a mean particle size of 10-400 nm (instant claims 112 and 113).

The composition applied in the method also comprises a tensioning agent which is a colloidal inorganic filler in an amount from 0.1 to 20% by weight (instant claims 60 and 65). The composition is applied to the outline of the eye (instant claim 114). Example 12 of Lion (page 11, paragraphs 267-268) teaches a lipstick (i.e. makeup composition) which was applied to the lips. In light of photo of *Shy Child*, the lips are skin which have wrinkles. Thus, Lion is teaching application of a composition to wrinkled skin. The composition comprises isodecane (i.e. a liquid, non-silicone fatty phase which is a branched C12 alkane that is a physiological medium acceptable for topical application to the face which has a Hansen solubility parameter of less than or equal to $17(\text{MPa})^{1/2}$ in light of LeMann (LeMann-column 8, lines1-30)) in an amount of 30.4 wt.%. The composition of Example 12 comprises the dispersion of Example 3 in an amount of 20% (10% active material and 10% of the isononyl isononanoate dispersant; Page 8, paragraphs 172-184). Notably, isononyl isononanoate is an emollient. Thus the composition, when applied to the wrinkled lips, would soften the wrinkles.

Lion teaches that the non-silicone liquid fatty phase may comprise monoalcohols with a Hansen solubility parameter of less than $20(\text{MPa})^{1/2}$ (Lion-claim 2). In particular, Lion specifically teaches the fatty monoalcohols: linoleyl (unsaturated), linolenyl

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(unsaturated), isostearyl (saturated), or octyldodecanol (saturated) (page 6, paragraph 118). While Lion does not embody that the liquid fatty phase comprises a fatty saturated or unsaturated monoalcohol with a Hansen solubility parameter of less than 20 (MPa)^{1/2} in Example 3, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have looked to Lion's teachings and added a fatty saturated or unsaturated monoalcohol with a Hansen solubility parameter of less than 20 (MPa)^{1/2}, such a linoleyl (unsaturated), linolenyl (unsaturated), isostearyl (saturated) or octyldodecanol (saturated), medium because Lion teaches that these reagents are suitable constituents for the organic phase (i.e. liquid fatty phase). The skilled artisan would have been motivated to so in order to increase the emolliency of the composition and further soften and hydrate the lips.

The composition of Example 3 is dispersion of methyl acrylate and a macromonomer of polyethylene/polybutylene copolymer containing a methacrylate mono-end group (Kraton L-1253; i.e. a polyethylene/butylene macromonomer methacrylate) in isononyl isononanoate (Page 8, paragraphs 172-184). Thus, the methylacrylate/Kraton L-1253 copolymer is dispersed in both isononyl isononanoate and isododecane when it is present in the lipstick composition of Example 12. The combined amount of the liquid fatty phase is present in an amount of 40.4%. The liquid fatty phase does not contain silicone liquid ingredients thus it has less than 50% by weight silicone liquid organic compounds.

Lion discloses that the copolymer formed from methyl acrylate and a macromonomer of polyethylene/polybutylene copolymer containing a methacrylate

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mono-end group (Kraton L-1253) is a graft polymer comprising side chains of the macromonomer (i.e. the polyethylene/polybutylene copolymer containing a methacrylate mono-end group (Kraton L-1253))(page 3, paragraph 48). Lion discloses that the acrylate is insoluble in the liquid fatty phase and that the side chains (i.e. macromonomer of polyethylene/polybutylene copolymer containing a methacrylate mono-end group (Kraton L-1253) are soluble in the medium (page 3, paragraph 49 and 50). These side chains are covalently bonded to the acrylic backbone (page 3, paragraph 49).

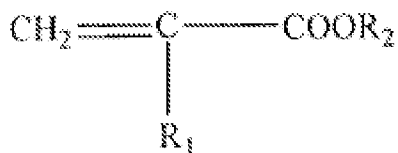
Lion generally discloses that the methacrylate/Kraton L-1253 polymer is formed from free-radical polymerization (page 3, paragraph 46) and the monomers of Example 3 are formed from free radical polymerization (page 8, paragraph 173). The macromonomer comprises 6% of the grafted polymer (page 8, paragraph 183). The macromonomer utilized in the reaction of Example 3 is taught to have a weight molecular average of 4,000 (page 7, paragraph 160). Lion teaches that it is preferable that the macromonomers utilized in his invention are soluble in the organic medium (i.e. liquid fatty phase) at a concentration greater than or equal to 5% by weight at room temperature (approximately 25 °C; page 3, paragraph 47). Thus, one of ordinary skill in the art would expect these homopolymers to also be solid at the cooler temperature of 20 °C.

With regard to instant claim 91, Example 1 of Lion (page 7, paragraph 146) teaches formation of the graft polymer utilizing isododecane as the liquid fatty phase rather than isononyl isononanoate, as the liquid fatty phase. Notably, all other reagents

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are then same. Thus, the isododecane and isononyl isononanoate are able to be substituted for each other as the liquid fatty phase because Lion teaches that it is suitable based upon the success of Examples 1 and 3. Thus, one of ordinary skill in the art would have reasonable expectation of success in substituting isododecane for isononyl isononanoate as the liquid fatty phase.

Lion teaches that it is preferable that the acrylic monomers utilized in his invention to construct the graft polymer are acrylic monomers whose homopolymer is in solid form at a concentration greater than or equal to 5% by weight at room temperature (approximately 25 °C) on the non-aqueous organic medium (i.e. liquid fatty phase; page 2, paragraph 45). Thus, one of ordinary skill in the art would expect these homopolymers to also be solid at the cooler temperature of 20 °C. The methacrylate/Kraton L-1253 polymer taught by Example 3 does not comprise any additional non-acrylic vinyl monomers, the mixture of the acrylic monomer and the optional non-acrylic vinyl monomer, comprises 100% of acrylic acid monomers. The acrylic monomer utilized in Example 3 is methacrylate, which has the structure:

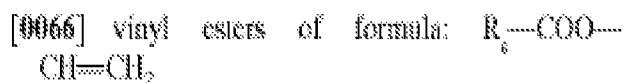


in which R1 and R2 are each methyl (i.e. CH3).

Lion teaches that the polymer dispersion of Example 3 produces grafted polymer particles with a size of 220 nm (page 8, paragraph 182) and a weight average molecular weight of 98,909 (page 8, paragraph 177). Lion teaches that the acrylic monomers may

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optionally be mixed with one or more non-acrylic vinyl monomers (page 2, paragraph 44). When this is the case, the vinyl monomers have the structure:



in which R₆ is a linear or branched alkyl group comprising 1 to 6 carbon atoms (page 3, paragraph 66). Lion teaches that the macromonomer reacts with vinyl end groups to attach as a chain (page 4, paragraph 75). While, Lion does not exemplify inclusion of a vinyl monomer in the polymeric dispersion formed by Example 3, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have looked to Lion's teachings and included a vinyl monomer in the skeleton backbone of the polymer. The skilled artisan would have been motivated to do so as a design choice as directed by Lion in order to alter the stability of the polymer in the dispersion, particularly in instances when hydrophilic/aqueous substances are present in which the vinyl monomer would be more suitable for use.

In the lipstick composition of Example 12, Lion teaches inclusion of pigments in an amount of 8.6% of the composition (page 11, paragraph 267). Titanium dioxide and zinc oxide are among the white pigments taught for inclusion in the composition (page 6, paragraph 119). Silica is taught for inclusion as a filler (page 6, paragraph 121). In light of Applicant's own specification, these reagents have the same chemical composition as tensioning agents. However, tensioning agents have a size limitation as defined by the instant specification (0.1 to 100 nm). Lion does not provide a disclosure for the size of the silica and titanium dioxide particles utilized in his compositions.

With regard to instant claim 114, Lion also exemplifies his invention in a mascara which is applied to the eyes (Example 11, paragraph 265) and a foundation which is applied to the skin (Example 13, paragraph 269). One of ordinary skill in the art would recognize that foundation is applied to the eyelid to provide "grab" for eyeshadows and is applied under the eye to cover dark circles under the eyes. Thus the foundation is applied to the outline of the eye. It would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have applied the composition to the outline of the eye as taught by Lion with his mascara and foundation exemplifications of the grafted polymer dispersion with tensioning agents (i.e. pigments and fillers).

Lion does not teach the size of the pigments and fillers taught for use in his composition are 0.1 to 100 nm, which would meet the size requirement for tensioning agents in instant claim 60.

Lion does not teach that tensioning agent is an agent that produces, at a concentration of 7% in water, a retraction of isolated *stratum corneum*, as measured with an extensometer, of more than 1% at 30°C under a relative humidity of 40% as set forth by instant claim 64.

Lion does not exemplify tensioning agents that are colloidal particles of inorganic fillers as set forth by instant claim 65.

Sheard teaches that sunscreen agents include titanium dioxide (particle size from 1-100 nm) and zinc oxide (particle size from 1 to 50 nm; page 9, lines 1-11). The

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cosmetic compositions of Sheard's invention are mascaras, foundation, and lipstick (page 1, lines 3-5).

Dark Lips teaches the method of wearing a lipstick composition with sunscreen to prevent UV pigmentation damage in the lips (page 1, paragraph 2).

With regard to instant claim 60, 64, and 65, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have added the titanium dioxide and zinc oxide pigments (with a particle size of 1-100 nm and 1 to 50 nm, respectively), to the lipstick composition of Example 12 because Lion teaches that these pigments are suitable for inclusion in his cosmetics and these sizes of pigments are utilized as sunscreens as taught by Sheard in cosmetics. The skilled artisan would have been motivated to do so to prevent the lips from darkening upon sun exposure as taught by *Dark Lips*. The skilled artisan would have had an expectation of success because Lion teaches these chemicals for use in his composition and these pigments, in the recited sizes are suitable for inclusion in cosmetics such as lipstick and mascara as taught by Sheard.

With regard to the ability of the tensioning agent to have recited retraction property under the conditions set forth by instant claim 64, Applicant's own specification discloses that it is the size of the titanium dioxide and zinc oxide particles which is responsible for illiciting the tensioning effect. Since Sheard teaches these compounds at the same size, it would naturally flow from the physiochemical properties that the reagents taught by Sheard would also have the same tensioning effect.

Claims 60 and 91 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lion, , in light of LeMann, *Shy Child*, and Applicant's own specification, in view of Sheard, and Dark Lips above, and further in view of US Patent No. 5,776,439 (Raspanti, 1998) and US Patent No. 5,607, 667 (Holcomb, 1997).

Claim Summary: The tensioning agent is colloidal silica.

The rejection of instant claim 60 is addressed above.

Lion teaches that silica is a filler which may be included in his invention.

Lion does not teach that the silica is colloidal silica as set forth by instant claim 91.

Raspanti teaches that titanium dioxide, silica, and zinc oxide are inorganic pigments for use in sun-protecting formulations (column 4, lines 20-25).

Holcomb teaches that colloidal silica is added to body care compositions such as lipsticks and suntan lotions (column 1, lines 40-50). Holcomb goes on to teach that the effectiveness of these body care compositions are enhanced by inclusion of colloidal silica with the size of 10 -100 angstroms (i.e. 1-10nm) (abstract).

With regard to instant claim 91, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have added colloidal silica to the lipstick composition taught by the combined references of Lion, Sheard, and *Dark Lips* because colloidal silica, zinc oxide, and titanium dioxide are pigments utilized together in sunscreen compositions. The skilled artisan would have been motivated to do so in order to increase the effectiveness of the sunscreen function

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of the titanium dioxide and zinc oxide in the lipstick. The skilled artisan would have had an expectation of success based upon Lion's teaching of inclusion of silica in his compositions and the enhanced effect of products which comprise colloidal silica as taught by Holcomb.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LORI MATTISON whose telephone number is (571)270-5866. The examiner can normally be reached on 8am-6pm (Monday-Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne (Bonnie) Eyler can be reached on (571)272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LORI MATTISON/

Examiner, Art Unit 1619

/Anne Marie Grunberg/

Supervisory Patent Examiner, Art Unit 1661